

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In Re:</b>	§	
	§	
<b>MARHABA PARTNERS LIMITED PARTNERSHIP.</b>	§	<b>Case No. 10-30227</b>
	§	
<b>Debtor.</b>	§	<b>Chapter 11</b>

**LIMITED OBJECTION TO DEBTOR'S  
PLAN OF REORGANIZATION DATED AUGUST 9, 2010**

**TO THE HONORABLE KAREN BROWN, United States Bankruptcy Judge:**

Humble Independent School District (the "District"), a creditor and party in interest in this bankruptcy case respectfully appears now before the Court to object to the Debtor's Plan of Reorganization Dated August 9, 2010 (doc. no. 100) (the "Plan") filed by Marhaba Partners Limited Partnership (the "Debtor"), stating as follows:

**I. FACTUAL BACKGROUND**

1. The Debtor's bankruptcy petition was filed on January 5, 2010 (the "Petition Date"), thus commencing the above-referenced bankruptcy case.
2. The Debtor filed its Disclosure Statement Under 11 U.S.C. § 1125 in Support of Debtor's Plan of Reorganization Dated May 15, 2010 (doc. no. 76) (the "Disclosure Statement"), seeking creditor and Court approval of its Disclosure Statement and the proposed plan of reorganization it purports to describe, the Debtor's Plan of Reorganization (doc. no. 77) (the "Plan").
3. On July 1, 2010, the District filed a Proof of Claim within the 180 day period after the date of the order for relief as prescribed for governmental entities by Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 3002(c)(1).

4. The District's Proof of Claim was based on a contract for the purchase by the District of land from the Debtor for development as a school site (the "Contract"). The Contract imposed certain post-closing development obligations on the Debtor including the construction of three (3) roadways to service the school site. The parties also entered into a Road Access Easement and Construction Agreement on or about September 21, 2005 at the time of the closing of the purchase and sale transaction under the Contract (the "Agreement"). Under the Contract and corresponding Agreement, the Debtor, at its sole expense, was to design, develop, and construct the roadways to the school site. The Agreement further provided that all construction on the roadways would be constructed by April 31 (sic), 2009. Roadway 2 was to adjoin the District's 67 acre property in the northeast quadrant and traverse to the Beltway 8 service road ("Roadway 2"). Although the Debtor commenced construction on Roadway 2 in 2009, construction stopped prior to the Petition Date. On information and belief, the contractor and design consultants on this project ceased work for non-payment prior to the petition date. Although the schedules and statements filed by the Debtor identify the contractor, JAH O Contractors, and design consultants, Terra Associates, Inc., as creditors, the Debtor has not identified its underlying obligations to the District in the papers that have been filed in this chapter 11 case.

5. The Disclosure Statement made no reference whatsoever to the Debtor's obligations to the District under the Contract and Agreement, or the Debtor's proposed treatment of the Contract and/or Agreement. The District thus filed an objection to the Disclosure Statement on July 14, 2010 (doc. no. 88). Subsequently, the Debtor agreed to include the following language in the Disclosure Statement:

On September 21, 2005, Marhaba entered into a Road Access Easement and Construction Agreement with Humble Independent School District

(the "Agreement"). A Road Access Easement Agreement was recorded in the deed records of Harris County, Texas and Marhaba believes the obligations thereunder run with the land. Under the terms of the Agreement, Marhaba is to design, develop and construct three roadways designated as roadways 2, 3 and 4 on Exhibit C to the Agreement. The design of the roadway was completed and construction commenced. However, work ceased when Marhaba did not have the funds to pay the design consultant, Terra Associates, Inc. ("Terra"), and the general contractor, JAH O Incorporated ("JAH O"). JAH O and Terra had filed mechanic's liens against the property and Marhaba does not contest the amount claimed as owed by each, respectively, or the validity of those liens. Marhaba intends to assume the Agreement and complete the roadways and satisfy the lien claims of JAH O and Terra upon the Effective Date. Marhaba will, within its power, execute any necessary documents required by Humble ISD to ensure completion of the roadway and to ensure that such obligations run with the land.

Disclosure Statement, as amended (doc. no. 99), § H.

6. In addition, the District and the Debtor agreed to include the following language in the Plan:

(a) Road Access Easement and Construction Agreement with Humble ISD.

Marhaba intends to assume the Road Access Easement and Construction Agreement and complete the roadways and satisfy the lien claims of JAH O and Terra upon the Effective Date. Marhaba will, within its power, execute any necessary documents required by Humble ISD to ensure completion of the roadway and to ensure that such obligations run with the land.

Plan, § 10.1(a).

7. The District subsequently sent the Debtor the following language to be inserted into a proposed Order confirming the Plan (the "Confirmation Order Language"):

Marhaba, and any person or entity succeeding Marhaba in the ownership of the Marhaba Tract (the "Marhaba Tract Owner") shall, at the Marhaba Tract Owner's sole cost and expense, have the obligation to construct, maintain, repair and replace a two-lane roadway access drive, paving, curbing, gutters and other related access drive improvements upon, over, under and across the portion of the Easement Area referred to as "Roadway No. 2" in the Easement Agreement (and depicted on the Street Plat attached to the First Amendment) or cause the same to be performed by any governmental authority accepting a dedication of such

roadway, on or before March 1, 2011. In the event that Roadway No. 2 has not been constructed by the Marhaba Tract Owner across the Marhaba Tract on or before March 1, 2011, The District shall have the right upon ten (10) days prior written notice to perform all of the obligations of the Marhaba Tract Owner under subparagraph (a), and the Marhaba Tract Owner shall reimburse the District for the actual costs thereof incurred by the District within thirty (30) days following the District's presentation of an invoice therefor; and it is further

Ordered, that the Second Amendment to Road Access Agreement is hereby approved, and the Debtor hereby directed to execute and file the executed Second Amendment to Road Access Agreement as a Plan supplement within ten (10) days of the entry of this Order.

8. Together with the Confirmation Order Language, the District sent the Debtor a Second Amendment to Road Access Agreement (the "Second Amendment", attached hereto as **Exhibit A**). The Confirmation Order Language and Second Amendment were intended to implement § 10.1(a) of the Plan.

9. The Debtor has not indicated to the District its willingness to include the Confirmation Order Language and/or to execute the Second Amendment.

## **II. OBJECTION**

10. Under § 1123(5) of chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), a plan shall provide adequate means for the plan's implementation. 11 U.S.C. § 1123(5). As the Debtor has not indicated that it will execute the Second Amendment and insert the Confirmation Order Language into a proposed Order to be filed with the Court, the District cannot be assured of whether or how the Debtor plans to implement the provisions of § 10.1(a). Accordingly, the District hereby objects to the Plan on the limited basis stated herein.

## **III. CONCLUSION**

WHEREFORE, premises considered, Humble Independent School District respectfully requests that the Court deny approval of Plan absent modifications to the Plan sufficient to

address the objections stated herein, and that this Court grant Humble Independent School District any other legal or equitable relief to which it may be entitled.

Respectfully submitted,

**BRACEWELL & GIULIANI LLP**

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**ATTORNEYS FOR HUMBLE INDEPENDENT  
SCHOOL DISTRICT**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been served on all parties via electronic means as listed on the court's ECF noticing system and on the parties listed on the attached service list by U.S. First class mail, on this 25th day of August, 2010.

/s/ Laura L. Venta

Laura L. Venta

## **EXHIBIT A**

## SECOND AMENDMENT TO ROAD ACCESS EASEMENT AGREEMENT

This SECOND AMENDMENT TO ROAD ACCESS EASEMENT AGREEMENT ("Amendment") is executed as of the date set forth below by and between MARHABA PARTNERS LIMITED PARTNERSHIP, a Texas limited partnership ("Marhaba"), successor in interest to LASCO Spring Trace Retail Partners, Ltd., a Texas limited partnership ("Lasco"), whose address for all purposes is 1499 Potomac, Houston, Texas 77057 and HUMBLE INDEPENDENT SCHOOL DISTRICT ("District"), whose address for all purposes is 20200 Eastway Village Dr., Humble, Texas 77338.

### RECITALS:

A. Lasco and Grantee entered into that certain Road Access Easement Agreement dated September 21, 2005, and recorded in the real property records of Harris County, Texas, under Clerk's File No. Y780913 (the "Original Easement"), as amended by that certain Amendment to Road Access Easement Agreement dated May 15, 2009, and recorded in the real property records of Harris County, Texas, under Clerk's File No. 20090241716 (the "First Amendment", and the Original Easement, as so amended is referred to herein as the "Easement Agreement")

B. Marhaba has succeeded to all right, title and interest of Lasco under the Easement Agreement and is the owner of the entirety of the Lasco Tract (as described in the Easement Agreement), and Marhaba and the District wish to further clarify the terms and conditions of the Easement Agreement upon the terms and conditions set forth herein.

### AGREEMENT

NOW, THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Defined Terms. All capitalized terms used herein and not otherwise defined shall have the meanings given to those terms in the Easement Agreement.

2. Amendments to Easement Agreement. Notwithstanding anything in the Easement Agreement to the contrary, effective as of the date of this Amendment, the Easement Agreement is hereby amended as follows:

(a) Marhaba and the District acknowledge and agree that the Street Plat, as described in the First Amendment, was not filed of record and the public dedication of the same was not accepted by the County. Accordingly, Section 1 of the First Amendment is hereby deleted in its entirety and of no further force or effect.

(b) In order to clarify Marhaba's obligations under the Easement Agreement, the parties agree that Marhaba shall, at Marhaba's sole cost and expense, have the obligation to construct, maintain, repair and replace a two-lane roadway access drive, paving, curbing, gutters and other related access drive improvements upon, over, under and across the portion of the Easement Area referred to as "roadway No. 2" in the

Easement Agreement (and depicted on the Street Plat attached to the First Amendment) (referred to herein as "Roadway No. 2"), or cause the County to perform the same, on or before March 1, 2011.

(c) In the event that Roadway No. 2 has not been constructed across the Lasco Tract by Marhaba on or before March 1, 2011, The District shall have the right upon ten (10) days prior written notice to perform all of the obligations of Marhaba under subparagraph (a), and Marhaba shall reimburse the District for the actual costs thereof incurred by the District within thirty (30) days following the District's presentation of an invoice therefor.

3. Successors and Assigns. The Easement Agreement, as amended hereby, shall run with the land and be binding upon and shall inure to the benefit of the District and Marhaba and their respective successors and assigns, including without limitation Section 2 of this Amendment.

4. No Further Amendments; Conflicts. Except to the extent amended by this Amendment, the Easement Agreement is hereby ratified and confirmed by the parties and shall remain in full force and effect as written. In the event of any conflict between the terms of the Easement Agreement and this Amendment, the terms of this Amendment shall control.

5. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be an original, but all of which shall together constitute but one Amendment.

*[Signature Page Follows]*



EXECUTED as of \_\_\_\_\_, 2010.

MARHABA:

MARHABA PARTNERS LIMITED PARTNERSHIP  
a Texas limited partnership

By: \_\_\_\_\_  
\_\_\_\_\_  
its General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS           §  
                                     §  
COUNTY OF HARRIS    §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2010,  
by \_\_\_\_\_, the \_\_\_\_\_ of  
\_\_\_\_\_, the General Partner of MARHABA  
PARTNERS LIMITED PARTNERSHIP, a Texas limited partnership on behalf of said limited  
partnership.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**DISTRICT:**

HUMBLE INDEPENDENT SCHOOL DISTRICT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

          This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2010,  
by \_\_\_\_\_, the \_\_\_\_\_ of HUMBLE  
INDEPENDENT SCHOOL DISTRICT, on behalf of said school district.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**SERVICE LIST**

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